

was federal, and the States retained their sovereignty, simple and pure, without delegating any portion thereof to the common agent.

I refer to Elliott's Debates, 1st volume, page 79, and article 2d of the Articles of Confederation :

"Each State retains its sovereignty, freedom, independence, and every power, jurisdiction and right which is not by this Confederation expressly delegated to the United States in Congress assembled."

There is a delegation of certain powers, but a retention of its sovereignty, its freedom and independence. The Articles of Confederation show this. Article 3d says :

"The said States hereby severally enter into a firm league of friendship with each other, for their common defence, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretence whatever."

But that system of government soon became inadequate, and in a mode different from that provided for in the Articles of Confederation, they formed a Constitution and created thereby, I assert, a government, and gave it power to enforce its mandates by direct action on individuals composing the States. This government was no longer simply federal, as under the old Articles of Confederation, but partook also of a national character. I refer on this point to the Federalist, No. 39, page 179.

"The prepared Constitution, therefore, even when tested by the rules laid down by its antagonists is, in strictness, neither a national nor a federal Constitution, but a composition of both. In its foundation it is federal, not national; in the sources from which the ordinary powers of the Government are drawn, it is partly federal and partly national. In the operation of those powers, it is national, not federal. In the extent of these again, it is federal, not national." No. 39, Federalist.

It was formed by the people of the States, not acting as an aggregate whole. I refer on this point to the same authority I have quoted on several occasions, for I know of none which ought to be regarded as higher.

"It is to be the assent and ratification of the several States, derived from the supreme authority in each State, the authority of the people themselves. The act, therefore, establishing the Constitution, will not be a national, but a federal act. * * * * *

It is to result neither from the decision of a majority of the people of the Union, nor from that of a majority of the States. It must result from the *unanimous* consent of the several States that are parties to it, differing no otherwise from their ordinary assents than in its being expressed, not by the legislative au-

thority, but by that of the people themselves. Were the people regarded in this transaction as forming *one nation*, the will of the whole people of the United States would bind the minority; and the will of the majority must be determined either by a compromise of the individual votes, or by considering the will of the majority of the States, as evidence of the will of the majority of the people of the United States. Neither of these rules has been adopted. Each State, in ratifying the Constitution, is considered as a sovereign body, independent of all others, and only bound by its own voluntary act." Federalist, No. 39, pages 176 and 177.

Mr. PUGH. What authority is that?

Mr. CLARKE. The Federalist. Does the gentleman accept that as authority?

Mr. PUGH. I thought it was Calhoun.

Mr. CLARKE. No sir. It is Mr. Madison, who did more than any other man living in his day to make this Constitution.

It was not adopted by a majority of the whole people of the United States. The preamble, "we, the people of the United States," means, "we, the people of the several united States," and, upon this point, I refer to Elliott's Debates, volume 1, page 224, where the first and original draft of the Constitution is given in this form :

"We, the people of the States of New Hampshire, Massachusetts, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia, do ordain, declare, and establish the following Constitution for the government of ourselves and our posterity."

That was the form in which the draft was brought in. It was then referred to a revisory committee, and that revisory committee put it in the present form, "we, the people of the United States do ordain, &c." The change was made upon this suggestion, that if, in the preamble, you included all the States by name, and it should so happen some of the States or the people thereof, not being bound by a majority of the people of the States, or a majority of the States, but each State having the right to determine for itself, that any State did not ratify it, there would be a preamble providing a form of government for a State which did not come within the provision of the Constitution; and to meet that objection, and with no view of altering the meaning or construction of the Constitution, it was put in this form, and the truth of history is this: that Rhode Island remained for several years a separate and distinct sovereign State, no part of this Government, and Maryland was one of the last to ratify the Constitution, but stood out upon the question of equality of territory, and not until that question was settled, of the perfect equality of the common territory, won by the common blood and the common treasure, did